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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 386 (JGK)

5 CORY HARRIS,
6 a/k/a "Hop," a/k/a "P,"

7
8 Defendant.

Arraignment

9 -----x

10 New York, N.Y.
11 March 6, 2017
12 11:00 a.m.

13 Before:

14 HON. JOHN G. KOELTL,

District Judge

15
16 APPEARANCES

17 PREET BHARARA
18 United States Attorney for the
19 Southern District of New York
20 ANDREW C. ADAMS
21 HADASSA R. WAXMAN
22 MARGARET S. GRAHAM
23 Assistant United States Attorneys

24 BOBBI C. STERNHEIM
25 GRAINNE E. O'NEILL
Attorneys for Defendant

H36WharC

1 (Case called)

2 THE COURT: Good morning.

3 The first item is the arraignment of the defendant on
4 the superseding indictment, S7, so I'll arraign the defendant.

5 Are you Cory Harris?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you being represented by Bobbi
8 Sternheim?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you seen a copy of the superseding
11 indictment against you, S7 15 Cr. 386 (JGK)?

12 THE DEFENDANT: Yes, I have it right here in front of
13 me.

14 THE COURT: Have you discussed it with your lawyer?

15 THE DEFENDANT: Yes.

16 THE COURT: Did you read the indictment?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you want me to read the indictment
19 aloud to you in open court, or do you give up -- or waive --
20 the reading of the indictment?

21 THE DEFENDANT: I'll waive it. We went over it.

22 THE COURT: How do you plead to the charges against
23 you in the superseding indictment; guilty or not guilty?

24 THE DEFENDANT: Not guilty.

25 THE COURT: All right. The defendant's plea of not

H36WharC

1 guilty will be entered.

2 Now, I've scheduled for tomorrow a final pretrial
3 conference, but I've gone over the papers and it may be that
4 there are various items that I can deal with today. If I can
5 deal with all of the items, it's possible that we won't need
6 the conference tomorrow, but I wanted to set the conference for
7 tomorrow in particular because I have motions *in limine* that
8 were filed by the government and by the defense. I had thought
9 that the response date for the motions *in limine* was the end of
10 last week, but I don't have any responses to the motions *in*
11 *limine*.

12 MS. STERNHEIM: Your Honor, we had requested a very
13 brief adjournment for the filing of them.

14 THE COURT: Right, but there was no request for an
15 adjournment of the response date.

16 MS. STERNHEIM: Based on my experience, I just assumed
17 naturally it would follow, and I apologize if it wasn't made
18 clear.

19 THE COURT: OK.

20 MS. STERNHEIM: But we are intending to file our
21 response hopefully today.

22 THE COURT: OK. Then I'll be able to deal with them
23 tomorrow, but if possible, the government should file any
24 response today also so that I can go over the responses from
25 both sides.

H36WharC

1 Ms. Sternheim, you're right, after I extended the date
2 for the motions, I certainly wouldn't hold you to the original
3 response date, so thank you for filing a response today.

4 MS. STERNHEIM: You're welcome, your Honor. And your
5 Honor, I just wanted the record to reflect that Grainne
6 O'Neill, who is now a full-fledged panel member, is trying the
7 case with me.

8 THE COURT: OK. How do you pronounce your first name?

9 MS. O'NEILL: It's Grainne.

10 THE COURT: Grainne?

11 MS. O'NEILL: Yes, your Honor.

12 THE COURT: OK. The government had three motions *in*
13 *limine*. The first was a motion which said, in essence, that
14 the government will seek to admit alleged coconspirator
15 statements, and I'll just make an observation with respect to
16 that.

17 The law is clear, under cases like United States v.
18 Geaney and United States v. Tracy, that if there's a sufficient
19 proffer by the government that alleged coconspirator statements
20 then should be received subject to connection, and if on the
21 basis of a preponderance of the evidence, the government shows
22 that the statements were made by a coconspirator during and in
23 furtherance of a conspiracy of which the defendant was a
24 member, then the statements should be accepted in evidence.
25 The procedure would be that if there is an objection to the

H36WharC

1 statements, I would receive them subject to connection and I
2 would tell the jury that the statement is received subject to
3 connection, which means that the jury can consider it unless at
4 some point I tell the jury that they are not to consider it,
5 that they're to strike the statement, they're not to consider
6 it. And the jury would then be advised subsequently, after I
7 make my finding, that the statements are in fact admissible and
8 should not be stricken.

9 The second government motion *in limine* was statements
10 by Rashaun Nicholson that he was stealing from Mr. Harris,
11 which allegedly provided a motive for Mr. Harris to allegedly
12 cause the killing of Mr. Nicholson. The government says that
13 these are statements against penal interests and therefore
14 admissible under the Federal Rules of Evidence, so I await what
15 the defense response is.

16 Then, the government says, they seek to preclude
17 certain cross-examination of cooperating witnesses 1, 2, and 3.
18 The impeachment would involve alleged sexual misconduct as well
19 as, it appears, an attempted robbery.

20 An observation: The papers that I have refer with
21 some specificity to cooperating witness No. 1, cooperating
22 witness No. 2, cooperating witness No. 3. The papers I have
23 are the ones that are filed on ECF and are redacted, so I don't
24 know what the details are. The government should promptly
25 provide an unredacted copy of the papers to the Court, and I

H36WharC

1 have a question.

2 I'll wait and see what the defense has to say, but is
3 any of this cross-examination cross-examination that the
4 defense would otherwise intend to use?

5 MS. STERNHEIM: Your Honor, without knowing who these
6 people are and what their background is like, it's a little
7 difficult to respond, but in our view, sexual assault is
8 violence, and to minimize it because it is violence against
9 women in a scenario where the individuals who will be
10 testifying to it are engaged in violence sets a standard that
11 we believe is unfair. If it was violence against a
12 coconspirator, it would come in. If it's violence against a
13 woman, arguably, from the government's position, it should not
14 come in, so we can't necessarily respond to that fully until we
15 have seen 3500 material or heard the testimony on direct
16 examination of these witnesses.

17 THE COURT: OK. What about an assault against another
18 man, not a coconspirator?

19 MS. STERNHEIM: Assault is violence. Violence is at
20 the heart of this indictment. Once again, I would have to see
21 what the background of the witness is to see whether it is
22 probative. Certainly if the Court were to leave this open, we
23 understand that there would be a review and rulings at an
24 appropriate time, but on a blank canvas, as we have now, it is
25 difficult for us to say yea or nay.

H36WharC

1 THE COURT: All right. I can listen to argument
2 tomorrow. I could also, after argument, reserve until the 3500
3 material is produced.

4 When does the government intend to produce the 3500
5 material?

6 MR. ADAMS: Your Honor, we are going to huddle with
7 defense counsel after this conference. It had been our
8 intention with respect to the cooperating witnesses and the
9 civilian, as a result of safety issues, to produce the Friday
10 before the trial begins, but we're going to try to come some
11 protective measures so that we can produce that a little
12 earlier. And just to narrow the issue with respect to the
13 request for preclusion, we are not seeking any longer to
14 preclude cross-examination on the attempted robbery. The rest
15 is unchanged.

16 THE COURT: OK. Then there is the defendant's motion,
17 which seeks to preclude the government from introducing
18 evidence of the defendant's alleged effort to secure the murder
19 of Flea in 2004, first; second, preindictment sale of
20 narcotics; and third, the preindictment possession of a
21 firearm.

22 I plainly have to await the government's response. My
23 initial question would be whether the government is seeking to
24 admit any of this evidence as 404(b) evidence. Any answer to
25 that?

H36WharC

1 MR. ADAMS: I'm sorry, your Honor. No. We're seeking
2 to offer it as evidence of the existence of a narcotics
3 conspiracy and firearms possession.

4 THE COURT: You're seeking to admit it as direct
5 evidence, not as 404(b) evidence?

6 MR. ADAMS: Not unless Mr. Harris places his character
7 at issue in some way that I'm not anticipating, but currently
8 it's direct evidence.

9 THE COURT: 404(b) evidence would not be admitted for
10 purposes of character, right?

11 MR. ADAMS: Correct, your Honor. We're seeking to
12 admit it as evidence of the existence of the conspiracy, access
13 to the firearms.

14 THE COURT: But all of this is preindictment, isn't
15 it?

16 MR. ADAMS: Yes, your Honor -- no. I'm sorry. The
17 activity is in 2014. The indictment goes back to 2012.

18 THE COURT: I'm sorry. I said 2004, not 2014.

19 MR. ADAMS: Yes, your Honor.

20 THE COURT: Was that in furtherance of THE conspiracy
21 that's charged?

22 MR. ADAMS: It is in furtherance of the narcotics
23 conspiracy, and it's proof of the defendant's possession of
24 firearms in furtherance of the same conspiracy, which is also
25 charged. This is a separate allegation of a murder-for-hire in

H36WharC

1 relation to a separate theft, so this is not in relation to the
2 murder of Mr. Nicholson.

3 THE COURT: No, I understand. I got that.

4 MR. ADAMS: OK.

5 THE COURT: But the allegation is that it is an act in
6 furtherance of the narcotics conspiracy charged in Count One of
7 the indictment?

8 MR. ADAMS: Yes, your Honor.

9 THE COURT: OK. What about the preindictment sale of
10 narcotics and the preindictment possession of the firearms?

11 MR. ADAMS: With respect to both of those, what we
12 anticipate is testimony from cooperating witnesses about the
13 purchase of narcotics and the possession of firearms by
14 Mr. Harris that straddles pre and postindictment time-wise.
15 Certain people will say: I knew him starting in or about 2012,
16 it may have been early 2011, and he was the neighborhood
17 marijuana dealer when I knew him, and I knew him to carry
18 firearms at that time.

19 It is, again, proof of the existence of the charged
20 conspiracy even if some aspects of the timeline that will be
21 testified about may predate the charged conspiracy.

22 THE COURT: And so there isn't going to be any
23 argument in the government papers that this is 404(b) evidence,
24 that it is being admitted or sought to be admitted for motive,
25 intent, plan.

H36WharC

1 MR. ADAMS: No, your Honor. It is the existence of
2 the narcotics conspiracy. We anticipate it will focus mostly
3 on the marijuana-sales aspect of the narcotics conspiracy.

4 THE COURT: All right. I raise it because, among other
5 things, the cases draw a distinction between direct evidence
6 and 404(b) evidence, and if it's 404(b) evidence, the general
7 rule is that it ought to be reserved for rebuttal, and the
8 government has to be quite specific as to what the permissible
9 purpose is for the evidence. But you tell me that when I read
10 the government papers, it's not going to rely on 404(b), right?

11 MR. ADAMS: Correct, your Honor. We anticipate that
12 it will be offered as direct evidence.

13 THE COURT: Then the question is if in fact it's
14 direct evidence, the question becomes 403, and a central part
15 of some of the specific allegations in the case are the alleged
16 murder-for-hire of Mr. Nicholson, not the effort to murder
17 Flea, and the question then becomes whether the relevance is
18 substantially outweighed by the danger of unfair prejudice to
19 put in another effort, unsuccessful, at another
20 murder-for-hire, particularly in view of what the government
21 contends is the strength of its case with respect to the actual
22 murder-for-hire of Nicholson. And then the question becomes
23 also if the real issue is 403, why should I make that decision
24 before trial? Why shouldn't I treat it like 404(b) evidence?
25 If I think that the relevance of the attempted murder of Flea

H36WharC

1 is outweighed by the danger of unfair prejudice, given all of
2 the evidence in the case, why shouldn't I await the development
3 of that evidence at trial before making a decision about that
4 particular act, which is something the government can address
5 in its papers?

6 That also appears to relate to the issue of how the
7 government intends to prove that. I mean, I can understand
8 that you wouldn't want to recall witnesses in order to prove
9 that, so that then becomes a question of how that's going to be
10 proved.

11 The defense says it wants documents, a witness list,
12 proffered testimony, which seems to go beyond what the case law
13 generally endorses in a criminal case, though I'm sure I could
14 order it, but a witness list and descriptions of witness
15 testimony is surely not generally part of discovery in a
16 criminal case, particularly in a case where there are
17 allegations of violence, though again, I'm sure that I have the
18 power to order that discovery. But there was at least one item
19 that the defense mentioned, which seems to me to be clear. If
20 the government has documents that it would otherwise intend to
21 use as part of its direct case with respect to that attempted
22 murder, those should be turned over. Right?

23 MR. ADAMS: Your Honor, there are no such documents.
24 This would be an entirely cooperator-based series of events.

25 THE COURT: And so that information would be turned

H36WharC

1 over by 3500 material?

2 MR. ADAMS: Yes, your Honor.

3 THE COURT: The defense says it needs time to
4 investigate this, that this is new, which would argue for
5 reserving decision on this until trial, when I can make the 403
6 analysis and after the defense has had time to review the 3500
7 material and make any arguments with respect to the 403
8 analysis.

9 MR. ADAMS: Your Honor, I'd be happy to address the
10 requested timing of the decision in our papers today.

11 THE COURT: I'm sorry?

12 MR. ADAMS: I'd be happy to address the timing of the
13 requested decision in our papers today. I would note that
14 given that the Flea attempted murder-for-hire is based on
15 cooperator evidence, what we would offer to the defense and
16 what we have in our 404(b) notice letter is some information
17 about what we understand that murder-for-hire attempt to have
18 entailed. In particular, what we've told defense is that
19 Mr. Harris contacted and agreed with a person known as Hood to
20 commit the murder. To the extent that Mr. Harris knows Hood,
21 I'm not sure what else the government can offer in terms of
22 giving them a springboard for investigation, other than the
23 3500 material that we will discuss with the defense after
24 today's conference.

25 THE COURT: Does that mean that Hood is the

H36WharC

1 cooperating witness?

2 MR. ADAMS: No, your Honor, Hood is not a cooperating
3 witness.

4 THE COURT: OK. You're going to address timing in
5 your papers. I want to see what you have to say and I want to
6 listen to defense counsel with respect to the motion, but why
7 isn't it the better course to defer until I hear more of the
8 evidence at trial and can make the 403 balancing analysis in
9 the same way that I would with 404(b) evidence?

10 MR. ADAMS: Your Honor, I think that that's actually a
11 perfectly reasonable way to go about it. I think that if we
12 can put in a letter today to sort of tee up the issues, the way
13 that this would come in would be through cooperating witnesses.
14 We can talk about witness order and the logistics of offering
15 this evidence or needing to recall a witness if it becomes
16 necessary, but I agree with the Court that your decision may
17 well rest heavily on the case as it comes in at trial. But
18 again, I'm happy to offer a letter today just to sort of tee up
19 the issue.

20 THE COURT: OK.

21 MR. ADAMS: Thank you, your Honor.

22 THE COURT: Anything defense counsel wants to add at
23 this point?

24 MS. STERNHEIM: Just very briefly, Judge. In response
25 to what else could the government provide other than 3500

H36WharC

1 material with regard to the other attempted murder-for-hire,
2 certainly the names of the individuals. Giving us Hood and
3 Flea is a nonstarter as far as doing any investigation. I
4 would at the very least ask for their government names and
5 anything else that would assist us in our investigation.

6 THE COURT: Mr. Adams.

7 MR. ADAMS: With respect to Hood, that one's easy. We
8 don't know his government name. With respect to Hood, we don't
9 know his government name. That's not somebody we've
10 identified, so Hood is as clear as I can be on that.

11 We do have some further information about who Flea is.
12 Given the nature of the allegation, I'm not sure that the risk
13 to Flea's safety in this context merits handing over his full
14 identification. Given that the conspiracy was not with Flea,
15 Flea may well have no idea that he was a target of a
16 murder-for-hire. This was something between Mr. Harris and
17 Hood. Mr. Harris presumably knows who Hood is, but again, in
18 speaking with defense counsel after this and in particular in
19 coming up with some schedules and protective measures for the
20 3500, I'm happy to raise this with them as well to see if we
21 can come to some accommodation without putting Flea at undue
22 risk.

23 THE COURT: OK. Anything else for now, Ms. Sternheim?

24 MS. STERNHEIM: No, your Honor.

25 THE COURT: OK. Let me turn to the voir dire. I've

H36WharC

1 reviewed the government voir dire. Of course, I have the voir
2 dire that I've used in the past. Please get my trial rules,
3 get my jury rules. If you don't have them already,
4 Mr. Fletcher can give them to you right after this conference.

5 I intend to use four alternates, and I use, as you
6 probably know, the struck-panel method, so there will be 36
7 potential jurors in the box and the first two rows. The first
8 28 will be the group for the 12 trial jurors plus 10
9 peremptories for the defense plus 6 for the government, which
10 equals 28. There will be 4 alternates plus 2 peremptories for
11 the defense, 2 for the government, for a total of 8 for the
12 alternate pool, for a total of 36.

13 I'll examine the jurors generally and then individual
14 questionnaires with individual questions for all of the jurors.
15 If there is any issue that raises a potential challenge for
16 cause, I'll call the juror to the sidebar along with counsel.
17 The defendant has the right to be present at any sidebars; if
18 the defendant wishes, the defendant has the right to be present
19 at any sidebars. If both sides agree on a challenge for cause,
20 I will probably agree and it will expedite the jury selection
21 process, so I urge you to agree on challenges for cause if
22 there is any juror that you think has a potential challenge for
23 cause.

24 When we get to the exercise of peremptories, the
25 defendant exercises 2 peremptories in the first 4 rounds; the

H36WharC

1 government exercises 1. In the last 2 rounds, each side
2 exercises 1. With respect to the alternates, each side has 2
3 peremptories -- defendant, government; defendant, government --
4 so 2 rounds of one peremptory each. You can exercise your
5 peremptories in any order, any numerical order, against the
6 first 28 and then against the remaining 8 in the alternate
7 pool. You don't have to exercise your peremptories in
8 numerical order.

9 With respect to the exercise of peremptories, you have
10 to use your peremptory or peremptories in each round or lose
11 the peremptory. You have to use it or lose it; you can't
12 reserve it. After the exercise of all the peremptories against
13 the first 28 is over, the lowest 12 are your jury, so if you
14 were to pass with respect to any individual round, it would be
15 the equivalent of excluding the highest numbered juror, because
16 it's going to be the lowest 12 who are your jury, and the same
17 reasoning applies to the exercise of peremptories against the
18 alternates.

19 Any questions about the process?

20 MR. ADAMS: Your Honor, I have a question just about
21 timing and the Court's hours and schedule. I'm happy to talk
22 about it tomorrow if you'd prefer.

23 THE COURT: No, no. The first day of trial is March
24 the 20th, and I usually say 9:00. I have an appointment, so
25 I'll say 9:30 on March the 20th. Normally we sit from 9:30

H36WharC

1 until 12:45, with a break, and then from 2:00 to 4:30, with a
2 break. I often sit Fridays half a day. I would reserve Friday
3 afternoons for other matters.

4 I accept faxes. If there are evidentiary issues that
5 you think are going to come up, please let me know in advance.
6 Send me a fax. I'll meet with you before the jury comes in, at
7 lunchtime, or after the jury leaves, but please don't spring
8 evidentiary issues on me. Let me know in advance. As I say, I
9 accept faxes. I'll meet with you early, I'll meet with you
10 late. That's the schedule.

11 And I was going to get to this. Originally I had
12 reserved four weeks for the trial. When I read your proposed
13 voir dire, you say the trial is expected to last one or two
14 weeks. Is that right, you're now estimating one to two weeks?

15 MR. ADAMS: I think that's correct, your Honor. Given
16 that we've streamlined a number of cooperators, we only have
17 the one defendant at this point, one to two weeks sounds more
18 likely. With respect to the first week, if we have a jury at
19 the end of the first day and we're sitting a half day on
20 Friday, then I expect we'll probably go midway into the second
21 week.

22 THE COURT: Rather than tell the jury about two weeks,
23 I'd be inclined to tell the jury less than three weeks.

24 MR. ADAMS: Fair. Thank you, your Honor.

25 MS. STERNHEIM: Your Honor, at this point we can't

H36WharC

1 predict the length of our case, if any.

2 THE COURT: What do the parties think about telling
3 the jury less than three weeks?

4 MR. ADAMS: That's fine with the government, your
5 Honor.

6 MS. STERNHEIM: It's fine.

7 THE COURT: OK. The outline of the case, in the voir
8 dire I would explain to the jury as follows:

9 "As I explained, this is a criminal case. It is
10 entitled the United States of America v. Cory Harris. The
11 defendant, Cory Harris, has been charged in an indictment
12 alleging the commission of six federal crimes.

13 "As I will explain, the indictment is not evidence
14 itself; it simply contains the charges against the defendant,
15 and no inference may be drawn against the defendant from the
16 existence of the indictment. You must keep in mind always that
17 the defendant is presumed innocent, that he has entered a plea
18 of not guilty to the charges against him, and that the
19 government must prove beyond a reasonable doubt the charges in
20 the indictment.

21 "I'll summarize the charges now so that we can
22 determine whether you have any personal knowledge of them or
23 whether there is anything about the nature of this case which
24 may make it difficult for any of you to serve on the jury.

25 "Count One of the indictment charges that from in or

H36WharC

1 about 2012 through in or about 2015, Cory Harris conspired with
2 others to violate the narcotics laws of the United States,
3 specifically, to distribute and possess with intent to
4 distribute 280 grams or more of cocaine base in a form commonly
5 known as crack, 100 grams or more of heroin, and marijuana.

6 "Count Two charges that from in or about 2012 through
7 in or about 2015, Cory Harris used, carried, and possessed
8 firearms and aided and abetted the use, carrying, and
9 possession of firearms during and in relation to the drug
10 conspiracy charged in Count One and in furtherance of that
11 conspiracy.

12 "Count Three charges that in or about December of
13 2014, Cory Harris conspired with others to travel in interstate
14 commerce and to use the facilities of interstate commerce with
15 the intent that a murder be committed in consideration for
16 payment, and death resulted. Specifically, Cory Harris agreed
17 to pay Frank Jenkins Jr. to murder Rashaun Nicholson and that
18 as a result, Jenkins shot Nicholson to death in the vicinity of
19 78 Catherine Street, New York, New York.

20 "Count Four charges that in or about December 2014,
21 Cory Harris, together with others, knowingly did travel in
22 interstate commerce and used the facilities of interstate
23 commerce with the intent that a murder be committed in
24 consideration for payment, and death resulted. Specifically,
25 Cory Harris agreed to pay Frank Jenkins Jr. to murder Rashaun

H36WharC

1 Nicholson and that Jenkins shot Nicholson to death in the
2 vicinity of 78 Catherine Street, New York, New York.

3 "Count Five charges that on December 28, 2014, while
4 engaged in a conspiracy to distribute and possess with intent
5 to distribute 280 grams or more of crack cocaine, Cory Harris
6 intentionally and knowingly killed or caused the intentional
7 killing of Rashaun Nicholson in the vicinity of 78 Catherine
8 Street, New York, New York.

9 "Count Six charges that on or about December 28, 2014,
10 during and in relation to a narcotics-trafficking offense,
11 namely, the narcotics conspiracy charged in Count One, and in
12 furtherance of that conspiracy, Cory Harris used and carried a
13 firearm and aided and abetted the use of a firearm, and did,
14 through the use of a firearm and through aiding and abetting
15 the use of a firearm, cause the death of Rashaun Nicholson.
16 Specifically, Frank Jenkins Jr., at the direction and with the
17 assistance of Cory Harris, shot and killed Rashaun Nicholson in
18 the vicinity of 78 Catherine Street, New York, New York.

19 "Again, I remind you that the indictment reciting the
20 charges I have just summarized is not evidence of any kind.
21 Moreover, I've only summarized the charges. I have not
22 detailed the elements of each of the offenses that the
23 government is required to prove beyond a reasonable doubt. In
24 my final instructions, I will explain the charges in more
25 detail and explain the law to be applied to the facts that you,

H36WharC

1 the jury, find.

2 "Does any juror have any personal knowledge of the
3 charges in the indictment as I have described it?"

4 Is that satisfactory with both sides?

5 MR. ADAMS: Yes, your Honor.

6 MS. STERNHEIM: Yes.

7 THE COURT: I now have a question, because it will
8 come up in the charge to the jury. In the proposed description
9 of the case, in the voir dire that the government gave me, in
10 describing Count Five, the government added "and in doing so,
11 possessed, carried, brandished, and discharged a firearm,"
12 picking up a 924 firearms offense. The charge in Count Five
13 doesn't contain that language, and the statutory citation is 21
14 U.S.C. 848(e)(1)(A) and Title 18, Section 2.

15 MR. ADAMS: Your Honor, if I could, I believe we can
16 own that as a mistake, and the government would be happy to
17 offer a corrected instruction with respect to Count Five.

18 THE COURT: You don't have to. I read what I intend
19 to tell them. At the least, the language "and in doing so,
20 possessed, carried, brandished, and discharged a firearm," you
21 can double-check, but I think where that probably came from is
22 an instruction under 924 rather than an instruction under 21
23 U.S.C. 848(e)(1)(A), but you should check that out to make sure
24 that an element of the crime that's charged in Count Five is
25 not picking up the language from 924.

H36WharC

1 MR. ADAMS: Your Honor, I will check, but I believe
2 you are absolutely right. That sounds like language picked up
3 from 924(c).

4 THE COURT: Does the defense want to say anything
5 about that?

6 MS. STERNHEIM: Your Honor, we're not prepared to
7 respond yet, having not fully absorbed that.

8 THE COURT: Sure.

9 There is a question that the government wanted me to
10 ask, which I don't usually ask, so I'll ask for the defense
11 view. The government asks the question, which I picked up:
12 "Does any juror own a gun? Has any juror received training in
13 the use of firearms? Does any juror believe that the laws
14 governing firearms possession should not be enforced?"

15 Is that information the parties want to be used in the
16 exercise for their peremptories?

17 MS. STERNHEIM: Your Honor, I would like to have an
18 opportunity to respond more fully tomorrow, but I think you
19 would have to ask that with regard to their views on many
20 things, and I don't think just guns should be singled out, so I
21 would propose that the Court not ask it.

22 THE COURT: Fine. I don't usually ask that question,
23 so if there is an objection from the defense, I will not ask
24 it. I do ask, "Does any juror have any opinion about the
25 enforcement of the federal murder laws or federal drug laws

H36WharC

1 that might prevent you from being a fair and impartial juror in
2 this case," which is sufficient.

3 There is another question, which is a fair question,
4 with respect to bias, which is, "Have any of you ever lobbied,
5 petitioned, or worked in any other manner for or against any
6 laws or regulations relating to the narcotics and firearms
7 policies of the United States? If so, what did you do?"

8 OK. "Parties and lawyers: The defendant Cory Harris
9 is represented at this trial by Bobbi Sternheim and Grainne
10 O'Neill. Also seated at counsel table is the defendant Cory
11 Harris. I'll ask each of you to stand."

12 I'm sorry.

13 MS. STERNHEIM: Mr. Harris was responding to standing,
14 and I said "not now."

15 THE COURT: Oh. Mr. Harris, I'm just telling you what
16 I'll do during jury selection.

17 "This action is being prosecuted by the United States
18 Attorney's Office for the Southern District of New York. The
19 United States Attorney for this district is Preet Bharara. The
20 conduct of the trial will be in the immediate charge of
21 Assistant United States Attorneys Hadassa Waxman, Andrew Adams,
22 and Margaret Graham. The government will be assisted at
23 counsel table by Nicholas Pavlis, a paralegal at the United
24 States Attorney's Office, and Anthony Melchiorri, a special
25 agent of the Bureau of Alcohol, Tobacco, Firearms, and

H36WharC

1 Explosives. I'll ask all of you to stand. "

2 Anyone else who may be at counsel table who should be
3 introduced?

4 MR. ADAMS: No one else for the government. Thank
5 you.

6 MS. STERNHEIM: Not at the defense table.

7 THE COURT: When will I get a witness list to put in
8 the voir dire for the jurors?

9 MR. ADAMS: Your Honor, subject to the conversation
10 about 3500 disclosures, I would propose the Friday before, and
11 we can provide it early in the day.

12 THE COURT: OK. "Places," I have 78 Catherine Street
13 in Manhattan, 119 Henry Street in Manhattan, and 45 Rutgers
14 Street in Manhattan. Any other places?

15 MR. ADAMS: Your Honor, there will be reference to
16 Bennington, Vermont, which is one of the locations where
17 narcotics were trafficked in the case, generally, and I'll
18 confirm whether or not there are any specific addresses in
19 Bennington as well, but certainly Bennington, Vermont.

20 MS. STERNHEIM: Judge, I just want to note that the
21 three addresses that were recited are just a couple of blocks
22 away, and the M15, if any of the jurors take it, because I know
23 I take it, stops right at 78 Catherine Street, so when the
24 Court admonishes the jury not to go to certain locations, I
25 just wanted the Court to be aware that that is part of travel

H36WharC

1 that may be used by some of the jurors.

2 THE COURT: OK. In my preliminary instructions, I'll
3 tell them, "Do not visit any place mentioned in the course of
4 the trial," and I'll add something which says, "You may well
5 pass some of the addresses you hear, but please don't go into
6 any of those places." OK?

7 All right. Will there be witnesses who are going to
8 testify with interpreters?

9 MR. ADAMS: None for the government, no.

10 THE COURT: So I don't need to talk to them about
11 following the court interpreter.

12 I will, of course, in the preliminary instructions,
13 tell the jurors not to look at or listen to anything to do with
14 the case, not to get or give any information; don't use any
15 forms of social media to get or give any information about the
16 case.

17 I also intend, after the jurors have been sworn and
18 after I've given them preliminary instructions, to ask them to
19 take an additional oath, and it goes like this:

20 "As I've said, I hope that for all of you this case is
21 interesting and noteworthy, but to underscore how serious my
22 instructions are on this issue, I'm going to administer an
23 additional oath to you, violations of which can have serious
24 consequences for anyone who does so, so please all of you
25 stand.

H36WharC

1 "Do each of you solemnly swear or affirm that you will
2 follow the Court's instructions, which are that until the case
3 is over you will not access in any way the news about the case,
4 either by the Internet, by print media, by radio, or by
5 television; and that you will not communicate with any others
6 about this case, including not talking about it in person or by
7 phone, not writing, blogging, or tweeting about it, and not
8 using any social networking sites, for example, Facebook,
9 MySpace, LinkedIn and Twitter, to discuss any aspect of the
10 case or your work as a juror. If you agree, please say 'I do.'
11 Please take your seats."

12 MR. ADAMS: That's good by the government, your Honor.
13 Thank you.

14 MS. STERNHEIM: Your Honor, I just might suggest that
15 you add "nor visit any of the locations."

16 THE COURT: OK. "And that you will not visit any of
17 the locations mentioned in the course of the trial."

18 MS. STERNHEIM: Thank you.

19 THE COURT: Sure.

20 All right. Remember, please, not to talk to the
21 jurors. Please leave any place where the jurors are, and I
22 will tell the jurors that I've told you to do that and that
23 you're not being impolite when you do that; you're just
24 following my instructions. So to make sure that what I tell
25 the jurors is accurate, I've told you now, don't talk to the

H36WharC

1 jurors, leave any place that the jurors are in, such as
2 elevators, lobbies, and the like. As you know, I will always
3 keep you here until the jury is dismissed from the courtroom,
4 and Mr. Fletcher will tell you when the jurors have left the
5 floor, and then you can leave.

6 All right. That was my list for today. Anything else
7 for me that you want to raise now?

8 MS. STERNHEIM: Just preliminarily, as the Court is
9 aware, Mr. Harris is incarcerated, so I would ask the Court to
10 be mindful that the jury not be present when Mr. Harris is not
11 present, because bringing him in, he would come through the
12 cell block.

13 THE COURT: Oh, yes, of course. And I assume that you
14 will take care of appropriate clothes for Mr. Harris.

15 MS. STERNHEIM: Yes.

16 THE COURT: The marshals should also assure that there
17 are separate marshals for any of the witnesses who need
18 marshals. I always have the defendant at counsel table when
19 the jury comes in or leaves, and the marshals are usually very
20 discreet, but Mr. Harris will be in the courtroom when the jury
21 comes in or leaves and will stay in the courtroom while the
22 jury is here.

23 MS. STERNHEIM: Your Honor, just so you know, the
24 reason I'm raising that is I've had the experience recently
25 where jurors come into the courtroom when the Court reconvenes

H36WharC

1 after a break at times.

2 THE COURT: Oh, no.

3 MS. STERNHEIM: I just wanted to underscore that.
4 That's it.

5 THE COURT: No, no. Irrespective of the defendant's
6 position, my practice is that I rise and ask everyone in the
7 courtroom to rise each time that the jury comes in or leaves,
8 so we're all here when the jury comes in or leaves. It's not a
9 situation where the jury wanders in and then I come in.

10 MS. STERNHEIM: No, I know, your Honor, but I'm just
11 raising it. During the jury selection, there are times when
12 jurors are mingling all around the halls and sometimes come
13 into the courtroom when they return for after-break
14 questioning. That's the time. I'm aware of your procedures
15 with regard to the court; I'm just raising that, when they're
16 milling around while they're still being selected.

17 THE COURT: No, it's a good point. Mr. Fletcher keeps
18 the jurors out of the courtroom until we're all present.

19 MS. STERNHEIM: OK.

20 THE COURT: And we send them out of the courtroom for
21 breaks and they're held outside of the courtroom.

22 MS. STERNHEIM: Thank you.

23 THE COURT: But it's a good reminder.

24 Anything else today?

25 MR. ADAMS: No, your Honor. We will fax over the

H36WharC

1 unredacted copy of the motion *in limine* as soon as we get back
2 to the office. Otherwise, nothing for the government.

3 THE COURT: See you all at 10:00 tomorrow.

4 MS. STERNHEIM: Thank you.

5 MR. ADAMS: Thank you, your Honor.

6 (Adjourned)